

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
NORTHEASTERN DIVISION**

OLLIE JUNIOR SMITH,

Plaintiff,

v.

ALABAMA DEPARTMENT OF  
CORRECTIONS, et al.,

Defendants.

Case No. 5:19-cv-00948-RDP-JEO

**REPORT AND RECOMMENDATION**

The plaintiff has filed a *pro se* complaint pursuant to 42 U.S.C. § 1983, alleging violations of his rights under the Constitution or laws of the United States. (Doc. 1). The plaintiff names the following defendants in the complaint: Alabama Department of Corrections and Commissioner Jefferson Dunn. (*Id.* at 2). The plaintiff seeks monetary relief. (*Id.* at 7). In accordance with the usual practices of this court and 28 U.S.C. § 636(b)(1), the complaint was referred to the undersigned magistrate judge for a preliminary report and recommendation. *See McCarthy v. Bronson*, 500 U.S. 136 (1991). Based on the following, the undersigned concludes this case is due to be dismissed for the plaintiff's failure to prosecute.

## **I. Discussion**

On June 21, 2019, the undersigned ordered the plaintiff to pay an initial partial filing fee of \$9.31 and to sign and return the Prisoner Consent Form attached to that order within thirty (30) days. (Doc. 3 at 2). The undersigned warned the plaintiff that failure to comply with the order within the prescribed time may result in dismissal of the complaint without further notice. (*Id.*).

More than thirty days have elapsed, and the plaintiff has failed to comply with or otherwise respond to the order. Therefore, this action is due to be dismissed without prejudice for the plaintiff's failure to prosecute.

## **II. Recommendation**

For the reasons stated above, the undersigned **RECOMMENDS** this action be **DISMISSED WITHOUT PREJUDICE**, for failure to prosecute.

## **III. Notice of Right to Object**

The plaintiff may file specific written objections to this report and recommendation. The plaintiff must file any objections with the Clerk of Court within fourteen (14) calendar days from the date the report and recommendation is entered. Objections should specifically identify all findings of fact and recommendations to which objection is made and the specific basis for objecting. Objections also should specifically identify all claims contained in the complaint

that the report and recommendation fails to address. Objections should not contain new allegations, present additional evidence, or repeat legal arguments.

Failing to object to factual and legal conclusions contained in the magistrate judge's findings or recommendations waives the right to challenge on appeal those same conclusions adopted in the district court's order. In the absence of a proper objection, however, the court may review on appeal for plain error the unobjected to factual and legal conclusions if necessary in the interests of justice. 11th Cir. R. 3-1.

On receipt of objections, a United States District Judge will review *de novo* those portions of the report and recommendation to which specific objection is made and may accept, reject, or modify in whole or in part, the undersigned's findings of fact and recommendations. The district judge also may refer this action back to the undersigned with instructions for further proceedings.

The plaintiff may not appeal the magistrate judge's report and recommendation directly to the United States Court of Appeals for the Eleventh Circuit. The plaintiff may only appeal from a final judgment entered by a district judge.

**DATED** this 29th day of July, 2019.

A handwritten signature in dark ink, appearing to read "John E. Ott", is written over a horizontal line.

**JOHN E. OTT**  
Chief United States Magistrate Judge

